

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' NOTICE OF FILING
RESPONSE TO COURT REQUEST FOR INVESTIGATION UPDATE
AND ADDITIONAL DOCUMENT PRODUCTION**

During this Court's teleconference on June 7, 2022, the Court requested that State Defendants provide dates regarding the State Election Board's ("SEB") investigation of Coffee County and an estimate of when State Defendants could produce SEB investigations reports for cases closed over the period April 1, 2020 through September 1, 2021.

I. Coffee County investigation.

Coalition Plaintiffs previously raised a discovery dispute regarding a claim of access to Coffee County's EMS server based on information in a recording made by Marilyn Marks, Executive Director of Coalition for Good Governance, of a phone call with Scott Hall. [Doc. 1360]. State Defendants filed the entire audio recording of the phone call obtained from Coalition Plaintiffs

for the Court's consideration, including Mr. Hall's credibility. [Doc. 1363]. Subsequently, during the April 7, 2022 teleconference, the Court ordered State Defendants to provide any documentation memorializing when the Coffee County EMS was replaced by the Center for Elections Systems, [Doc. 1374 at 53:20-25], which State Defendants then produced, [Doc. 1377].

Following up on the Coffee County matter, the Court has requested dates of anything that has been filed in that matter "in terms of a complaint or an amended complaint or something related to that." The state investigation and administrative process does not typically involve filing formal complaints or other pleadings similar to a court proceeding. The Coffee County investigation, which is SEB Case Number 2020-250, was originally opened on December 9, 2020. As indicated in the publicly available transcript of the December 14, 2021 SEB hearing, the case originally involved three separate complaints, including one regarding a video that surfaced on YouTube showing the Coffee County election supervisor, Misty Martin, discussing ways to manipulate the election software where a computer password was visible on the screen.¹ At the December 2021 meeting, the SEB voted to refer the matter to the Attorney

¹ A copy of the relevant portions of the transcript of the SEB hearing on December 14, 2021 is attached as Exhibit A.

General's Office for further review. *Id.* Subsequently, after learning of the telephone call recording between Scott Hall and Ms. Marks played during the deposition of Gabe Sterling on February 24, 2022, the investigation in the Coffee County case was reassigned to the Secretary of State's Investigations Division. This in essence resulted in the Coffee County case being returned to the Investigations Division for further investigation. At this time, the investigation in Coffee County, SEB Case 2020-250, remains open.

II. Estimated timeline to produce investigation reports.

During the teleconference on June 6, 2022, the Court asked for a projection of the length of time for State Defendants to produce investigative reports from the 198 investigations referenced at [Doc. 1388] that are closed and involved either elections security or operations. Current resources available to collect records and review records for production are limited in light of the upcoming Primary Runoff Election on June 21, 2022 and counsel for State Defendants' obligations in the *Fair Fight Action* case. With that in mind, and barring any unexpected issues, State Defendants should be able to start a rolling production of documents by the week of July 11, 2022.

III. Response to Plaintiffs' Objection regarding Coffee County.

Finally, State Defendants earlier planned to more fully respond to Plaintiffs' "Notice of Objection" that appeared to be an attempt at seeking

contempt sanctions without filing a motion for contempt. [Docs. 1387; 1388, pp. 4-5]. While Plaintiffs' allegations in that filing continue the sad history of this case of stretching claims and making personal accusations, State Defendants believe the discussion of issues with the Court during the most recent teleconference and the information provided above address the Court's questions regarding Coffee County and do not see the need to further clutter the docket responding yet again to Plaintiffs' innuendo and invective. If the Court desires further briefing on this issue, State Defendants will do so.

Respectfully submitted this 10th day of June, 2022.

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L.R. 7.1(D) CERTIFICATION

I certify that this Notice has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this Response has been prepared using 13-pt Century Schoolbook font.

/s/ Bryan P. Tyson
Bryan P. Tyson